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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,704	08/14/2000	Roger William Gutwein	7724M	1024

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EXAMINER	
WEIER, ANTHONY J	
ART UNIT	PAPER NUMBER
1761	14

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-14

Office Action Summary	Application No. 09/638,704	Applicant(s) GUTWEIN ET AL.	
	Examiner Anthony Weier	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-56* is/are pending in the application.

4a) Of the above claim(s) *1-15,39-42,47 and 48* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-38,43-46 and 49-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. Applicant's election with traverse of Group II (claims 16-38, 43-46, and 49-56) in Paper No. 11 (filed 9/18/02) is acknowledged. The traversal is on the ground(s) that the groups have not acquired a separate status in the art and that prosecution of all groups together would eleminate duplication of search efforts. This is not found persuasive because the groups are patentably distinct and are required by statue to be examined separately. There can be examined no more than one invention per application.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 31-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 31-34, it is not clear as to what encompasses the terminology "Global Assimilation Customization Systems" and how it is defined. Also, is this a trademark?

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 9-198570.

Japan 9-198570 discloses a process of forming a customized coffee beverage from a brewer including brewing a coffee extract and storing the coffee extract in the brewer for a time within the range called for in claim 56. It is considered inherent that

Japan 9-198570 employs filtering in preparing the coffee extract. Nevertheless, if it is shown that this does not inherently occur, employing filtering in coffee brewing is notoriously well known and would have been obvious to one having ordinary skill in the art at the time of the invention as a conventional tool in preparing a coffee extract. In addition, so far as the time for brewing and prior to filtering, such decision would have been within the purview of one skilled in the art, and it would have been further obvious to have arrived at such a time as a matter of preference depending on the particular extraction yield desired.

3. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 9-198570 taken together with Bach et al.

Japan 9-198570 has been discussed above. Japan 9-198570 is silent regarding mixing of different fractionated portions of the coffee extract. However, Bach et al teaches mixing various factions of coffee extract to provide different desired coffee products (e.g. claims). It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied such a processing step to increase the customizing options with regard to the Japan 9-198570 product.

4. Claims 16-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al taken together with Japan 9-198570.

Kondo et al discloses a method of delivering a customized beverage product as claimed wherein there is provided a customization device, said customization device processes inputed information, and same causes a device to deliver said customized beverage. Kondo et al is silent regarding delaying, for example, the dilution of the

beverage extract for at least 5 minutes after the onset of brewing. However, Japan 9-198570 teaches preparation of a coffee beverage involving creating a coffee extract which is stored for times within the limits of the instant invention prior to dilution of same. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included such a dilution delay to impart greater quality and efficiency in the preparation of the coffee beverage.

The claims further call for collecting a user identification from the consumer and the ability to use same to retrieve consumer preference data. Although Kondo et al is silent regarding same, such concept is notoriously well known. For example, ATM machines operate in a similar way with regard to collecting and retaining information and providing for identification input at a later date for consumer access to this stored information. It would have been further obvious to have incorporated same in the process of Japan 9-198570 to provide greater advantages to the consumer.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 35, 43, 49, 50, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Kondo et al.

Kondo et al discloses a method of delivering a customized beverage product as claimed wherein there is provided a customization device, said customization device processes inputed information, and same causes a device to deliver said customized

beverage. Kondo et al also provides customized beverage product recommendations to consumers.

6. Claims 36-38, 44, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al.

The claims further call for collecting a user identification from the consumer and the ability to use same to retrieve consumer preference data. Although Kondo et al is silent regarding same, such concept is notoriously well known. For example, ATM machines operate in a similar way with regard to collecting and retaining information and providing for identification input at a later date for consumer access to this stored information. It would have been further obvious to have incorporated same in the process of Kondo et al to provide greater advantages to the consumer.

7. Claims 51, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al as applied in paragraph 5 taken together with Katz et al.

The claims further call for providing offerings based on data generated from previous delivered customized beverages or samples. Although Kondo et al is silent concerning same, this concept is notoriously well known. For example, Amazon.com collects information regarding a consumers shopping and makes recommendations based on same at a later date (see Katz et al). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as a way to increase and personalize customer service.

8. Claim 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al (as applied in paragraph 5) taken together with Lombardi et al.

Kondo et al is silent regarding obtaining consumer preference data involving allowing the consumer to sample one or more consumer products. However, Lombardi et al teaches a similar method for recommending products to consumers using consumer preference data and also allows consumers to sample the product to determine the consumer's preference (col. 5, lines 1 – col. 6, line 16). As such, it would have been obvious to one having ordinary skill in the art at the time of the invention to have allowed the consumer to sample the products of Kondo et al in order to collect consumer preference data.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Anthony Weier
Primary Examiner
Art Unit 1761

5/5/03

Anthony Weier
May 5, 2003